

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS
3 DOCKET NO. 1:13-MD-2419 (RWZ)
4 IN RE: NEW ENGLAND COMPOUNDING
5 PHARMACY, INC. PRODUCTS
6 LIABILITY LITIGATION

7 THIS DOCUMENT RELATES TO:

8 ARMETTA, ET AL. V. BOX HILL SURGERY CENTER,
9 LLC, ET AL.
10 NO. 1:14-CV-14022-RWZ

11 BOWMAN, ET AL. V. BOX HILL SURGERY CENTER,
12 LLC, ET AL.
13 NO. 1:14-CV-14028-RWZ

14 DAVIS, ET AL. V. BOX HILL SURGERY CENTER,
15 LLC, ET AL.
16 NO. 1:14-CV-14033-RWZ

17 DREISCH, ET AL. V. BOX HILL SURGERY CENTER,
18 LLC, ET AL.
19 NO. 1:14-CV-14029-RWZ

20 FARTHING, ET AL. V. BOX HILL SURGERY CENTER,
21 LLC, ET AL.
22 NO. 1:14-CV-14036-RWZ

23 KASHI, ET AL. V. BOX HILL SURGERY CENTER,
24 LLC, ET AL.
25 NO. 1:14-CV-14026-RWZ

TORBECK, ET AL. BOX HILL SURGERY CENTER,
LLC, ET AL.
NO. 1:14-CV-14023-RWZ

HANDY, ET AL. V. BOX HILL SURGERY CENTER,
LLC, ET AL.
NO. 1:14-CV-14019-RWZ

DEPONENT: LAXMAIAH MANCHIKANTI, M.D.
DATE: FEBRUARY 16, 2017
REPORTER: CHELSEA SEVILLA-LOZADA

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STIPULATION

The deposition of LAXMAIAH MANCHIKANTI, M.D. taken at
THE PAIN CENTER, 2831 LONE OAK ROAD, PADUCAH, KENTUCKY
42003 on THURSDAY, the 16TH day of FEBRUARY, 2017 at
approximately 10:00 A.M. CST; said deposition was taken
pursuant to the FEDERAL Rules of Civil Procedure. It is
agreed that CHELSEA SEVILLA-LOZADA, being a Notary
Public and Court Reporter for the State of Kentucky, may
swear the witness.

<p style="text-align: right;">Page 74</p> <p>1 Q And in that book, don't you indicate that it's</p> <p>2 very important to put down the specific drug that's</p> <p>3 being used by the doctor?</p> <p>4 A That's correct.</p> <p>5 Q So that if you're really not using Depo-</p> <p>6 Medrol, but rather a compounded drug, shouldn't Dr.</p> <p>7 Bhambhani have indicated that in her patient's charts,</p> <p>8 rather than writing Depo-Medrol?</p> <p>9 MR. KIRBY: Objection. Go ahead.</p> <p>10 A Well, she's -- I'm saying specific drug is</p> <p>11 that you are using lidocaine, you are using Depo-</p> <p>12 Medrol. Those are the issues. You use</p> <p>13 methylprednisolone. I'm not saying that you have to use</p> <p>14 a generic name or a pharmacological name, or a brand</p> <p>15 name, so that issue was not an issue at that time, and I</p> <p>16 have routinely dictated that if I use a Depo-Medrol,</p> <p>17 even though it was from NECC, or from another</p> <p>18 compounder, I called it Depo-Medrol, only the difference</p> <p>19 was that if I use a preservative free, I would say it is</p> <p>20 preservative free.</p> <p>21 Q You issued a 24-page report at your last --</p> <p>22 A A 24-page report on what?</p> <p>23 Q Your expert report in this case.</p> <p>24 A Oh, in this case. Yes, sir. I do. I have</p> <p>25 that right here.</p>	<p style="text-align: right;">Page 76</p> <p>1 A I'm not a very good typist. I'm extremely</p> <p>2 poor, my technical skills are not very good in typing.</p> <p>3 I'm a good physician, but not a typist. I have</p> <p>4 transcriptionists, they type if I dictate. Here, we</p> <p>5 prepared this document together with the discussions, so</p> <p>6 I believe his office may have typed it.</p> <p>7 Q Okay. So this 28 pages was typed at Mr.</p> <p>8 Kirby's office and sent to you, and then you signed it?</p> <p>9 MR. KIRBY: Objection to form. Again, it's</p> <p>10 protected information. Privileged information.</p> <p>11 A No. As I said, we -- I reviewed the</p> <p>12 documentation first, then we had a meeting. This was</p> <p>13 about two hours or so. We discussed all these issues.</p> <p>14 We went one by one, and he started writing down, I'm</p> <p>15 very bad at shorthand either, so after that, then it was</p> <p>16 typed and it came to me. I made corrections, and then</p> <p>17 the final document was produced.</p> <p>18 Q Have you reviewed the reports of any other</p> <p>19 pain management physicians in this case?</p> <p>20 A I have reviewed the report of Dr. Saberski,</p> <p>21 Saberski or Saberski, whatever.</p> <p>22 MR. KIRBY: Saberski.</p> <p>23 A Saberski, no, I can't say it. Saberski.</p> <p>24 Saberski.</p> <p>25 Q Box Hill, you read Dr. Main's (phonetic)</p>
<p style="text-align: right;">Page 75</p> <p>1 Q I've got 24 typed pages that they're first</p> <p>2 person. It is my opinion, it is my belief. It is</p> <p>3 written in the first person. Did you, or someone in</p> <p>4 your office, sit down and type out these 24 pages?</p> <p>5 MR. KIRBY: Objection to form. It's privileged</p> <p>6 protected information in Rule 26.</p> <p>7 MR. MILLER: You can answer.</p> <p>8 BY MR. MILLER:</p> <p>9 A Well, we had both of us, the attorney, Mr.</p> <p>10 Kirby and I, discussed these issues. I reviewed the</p> <p>11 documentation first, and then we discussed with this and</p> <p>12 jointly we came up with this report.</p> <p>13 Q Oh, who typed it?</p> <p>14 MR. KIRBY: Objection to form. Drafting is not</p> <p>15 discoverable.</p> <p>16 Q I didn't ask you who drafted it. I said who</p> <p>17 typed it.</p> <p>18 MR. KIRBY: Yeah. Same objection. If you</p> <p>19 recall.</p> <p>20 MR. MILLER: Why don't you suggest to him that</p> <p>21 he not recall.</p> <p>22 BY MR. MILLER:</p> <p>23 Q In court, every question is if you can recall,</p> <p>24 Doctor, if you can remember. Do you remember typing a</p> <p>25 24-page report?</p>	<p style="text-align: right;">Page 77</p> <p>1 report?</p> <p>2 A No. Dr. Main, who is that? Is that in there?</p> <p>3 I don't recall.</p> <p>4 Q He was an expert also hired by Box Hill.</p> <p>5 A No. I have not reviewed any of their expert's</p> <p>6 reports. I have only reviewed your expert's reports to</p> <p>7 the best of my knowledge.</p> <p>8 Q But you are -- are you confident that all of</p> <p>9 the information in here that says that it's my opinion,</p> <p>10 that they are truly your opinions?</p> <p>11 A Yes, sir. I am.</p> <p>12 Q If you could go to page 4?</p> <p>13 A Yes.</p> <p>14 Q Section B, medication purchasing by the Box</p> <p>15 Hill defendants.</p> <p>16 A Yes.</p> <p>17 Q Apparently, Dr. Main has a very -- medication</p> <p>18 purchased by the Box Hill defendant, as well.</p> <p>19 A I didn't understand your prior comment. I'm</p> <p>20 looking at page 4, Section B, medication purchasing by</p> <p>21 the Box Hill defendants, and you made some other comment</p> <p>22 after that. I didn't hear that.</p> <p>23 Q I said did Dr. Main, another expert in this</p> <p>24 case, as a Section B with the same exact title, matter</p> <p>25 of fact, almost the entire report is the same as yours,</p>

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<p>1 but we'll get to that.</p> <p>2 MR. KIRBY: Move to strike. No question. Go</p> <p>3 ahead.</p> <p>4 A Oh, well --</p> <p>5 MR. KIRBY: There's no question. Just wait.</p> <p>6 A Next question.</p> <p>7 Q Go down to the second paragraph that begins</p> <p>8 "Box Hill ordered." Do you see that?</p> <p>9 A Yes.</p> <p>10 Q This is a prescription order form provided by</p> <p>11 NECC. Have you actually reviewed the actual</p> <p>12 prescription order forms that Dr. Bhambhani used in this</p> <p>13 case?</p> <p>14 A Yes. I have.</p> <p>15 Q And are you aware that she was sending names</p> <p>16 that were simply on a schedule that she had seen. Did</p> <p>17 you see that?</p> <p>18 MR. KIRBY: Objection to form. You can answer.</p> <p>19 A Yeah. I saw that she sent the schedules. I</p> <p>20 don't understand what the question is. I saw that she</p> <p>21 was sending the schedules, and some of them had the</p> <p>22 names, but sometimes she just sent the see attached, the</p> <p>23 schedule.</p> <p>24 Q Right. But the schedule she is sending is a</p> <p>25 schedule of patients that she has already treated, so</p>	<p>1 you talking about? States, federal, I don't know,</p> <p>2 what are you talking about?</p> <p>3 BY MR. MILLER:</p> <p>4 Q Well, I can give you a list of them. Are you</p> <p>5 familiar with the Maryland Law co-wire (phonetic) that</p> <p>6 requires single prescriptions for individual patients?</p> <p>7 A Yes. I have seen that, but that is meant for</p> <p>8 the pharmacist and it is -- it did not come from</p> <p>9 Maryland Board of Medical Licensure. Also, it is for</p> <p>10 controlled substances. You just stated controlled</p> <p>11 substances. So this is not a controlled substance.</p> <p>12 Q Well, under Massachusetts definition, all</p> <p>13 drugs are controlled substances, are they not?</p> <p>14 MR. KIRBY: Objection.</p> <p>15 A I'm not aware of that.</p> <p>16 Q Are you aware of the Massachusetts statute</p> <p>17 that requires single prescription -- individual</p> <p>18 prescription for individual patients?</p> <p>19 MR. KIRBY: Objection to form.</p> <p>20 A Again, I have seen that several places in this</p> <p>21 documentation when I was going through, but these are</p> <p>22 all pharmacy directions. None of them is related from</p> <p>23 the Board of Medical Licensure. It is not controlling</p> <p>24 the practice of medicine. If that is the case, many of</p> <p>25 the doctors are not using that regulation as you call</p>
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<p>1 you would treat 12 patients on October 12th, October the</p> <p>2 13th, she filled out a prescription order form and</p> <p>3 attaches that sheet, which is merely a list of names of</p> <p>4 patients she saw the previous day.</p> <p>5 MR. KIRBY: Objection to form. Is there a</p> <p>6 question?</p> <p>7 MR. MILLER: I'm getting to it.</p> <p>8 MR. KIRBY: Okay.</p> <p>9 BY MR. MILLER:</p> <p>10 Q Is it your opinion that that's appropriate?</p> <p>11 A Well, if she is going to use the -- if she's</p> <p>12 going to inject the steroids in the same patients again,</p> <p>13 Yes. It is appropriate.</p> <p>14 Q Okay. If she's not, then it would not be</p> <p>15 appropriate, correct?</p> <p>16 MR. KIRBY: Objection to form.</p> <p>17 A At least she was under the belief that they</p> <p>18 were coming back for the injections, that's why they</p> <p>19 were on the list, and that is the reason she provided</p> <p>20 the list. That is my interpretation of what I</p> <p>21 understood from her deposition, as well as looking at</p> <p>22 the forms.</p> <p>23 Q Are you familiar with the regulation that</p> <p>24 requires single prescriptions for individual patients?</p> <p>25 MR. KIRBY: Objection. Where is it -- what are</p>	<p>1 it. I'm not sure if it is a regulation, or guideline,</p> <p>2 or policy. In any case, we have done the same thing and</p> <p>3 the majority of physicians I know of who have ordered</p> <p>4 from NECC, uses the same format. In the beginning, we</p> <p>5 didn't even give patient's names, and later on, they</p> <p>6 asked us to give us the names of the patients we will be</p> <p>7 using, so we will just routinely send the schedules and</p> <p>8 or we send the names of the patients. We -- of course,</p> <p>9 we send only the patients where they will be receiving</p> <p>10 the epidural injections, or that will be receiving the</p> <p>11 steroids.</p> <p>12 Q Can you go to page -- I mean Exhibit number</p> <p>13 13? It's a few pages in, Exhibit 13. It's a</p> <p>14 prescription order form.</p> <p>15 MR. KIRBY: We're working on it. Hold on one</p> <p>16 second. He has it in front of him if you -- just so</p> <p>17 you know.</p> <p>18 BY MR. MILLER:</p> <p>19 Q Okay. So in the first column where it says</p> <p>20 "Name of patient," and it says "see attachment of</p> <p>21 patient names." Do you see that?</p> <p>22 A Yes.</p> <p>23 Q The next one says "One patient five vials." Do</p> <p>24 you see that?</p> <p>25 A Yes.</p>

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<p>1 and started looking there, she could find it, but she</p> <p>2 had no reason to do that.</p> <p>3 Q You don't think that the doctor has knowledge</p> <p>4 that a compounding pharmacy they're about to use has</p> <p>5 been warned by the FDA, and then had instances of other</p> <p>6 outbreaks?</p> <p>7 MR. KIRBY: Hey, Jay, can you -- can you please</p> <p>8 read that back. It didn't all come through.</p> <p>9 MR. MILLER: Okay.</p> <p>10 MR. ROTH: Jay, now nothing's coming through.</p> <p>11 MR. MILLER: My brain went dead. I was trying</p> <p>12 to --</p> <p>13 MR. ROTH: Oh, okay. I wasn't sure if it was</p> <p>14 hardware or software.</p> <p>15 MR. MILLER: Which one am I?</p> <p>16 BY MR. MILLER:</p> <p>17 Q If Dr. Bhambhani was aware prior to the</p> <p>18 outbreak that the compounder she was using had some</p> <p>19 problems. They had an outbreak before. Just they'd</p> <p>20 been warned by the FDA about their practices, they had</p> <p>21 cut corners, would it have been reasonable for her to</p> <p>22 decide, maybe I shouldn't use that compounder if she had</p> <p>23 that information?</p> <p>24 MR. KIRBY: Objection to form, foundation,</p> <p>25 hypothetical nature of the question, but, go ahead.</p>	<p>1 because of a fungal release, would that concern you</p> <p>2 enough to maybe think about using a different</p> <p>3 compounder?</p> <p>4 MR. KIRBY: You said today, right?</p> <p>5 MR. MILLER: Yes.</p> <p>6 Q You go along back to your office tomorrow and</p> <p>7 you hear that.</p> <p>8 A Well, I'm not using compounders today, so that</p> <p>9 will be a purely hypothetical nature, but let us say if</p> <p>10 we -- if I did hear this before 2012, again, I will look</p> <p>11 into that. They -- they recovered from whatever the</p> <p>12 problem was. They recalled that, and they went on,</p> <p>13 because they are still in business. If that was a major</p> <p>14 nature of it, why did they not close them down. Now, in</p> <p>15 2012, after this happened, they have closed it down.</p> <p>16 NECC is not in business any longer, but there was</p> <p>17 nothing like that happened before. We get IV fluids</p> <p>18 recalled all the time, cardiopathic solutions were</p> <p>19 recalled, but people are still ordering from them,</p> <p>20 because that batch is over, and the recall is done.</p> <p>21 Q Doctor, you would agree that getting a bad</p> <p>22 meal, and getting a bacterial meningitis from a drug are</p> <p>23 two different results, wouldn't you?</p> <p>24 MR. KIRBY: Objection to form. You can answer.</p> <p>25 A Well, they are not the same. I was too</p>
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<p>1 A Well, the question is hypothetical,</p> <p>2 definitely, and, first of all, she did not have any</p> <p>3 problems to reason, but FDA had problems with it in your</p> <p>4 situation, what you are saying, but they did not close</p> <p>5 it down. Nobody -- a consumer would not know there is a</p> <p>6 major issue if it is not closed down. If you go to a</p> <p>7 restaurant to eat, you are not going to look at the</p> <p>8 health survey each time you look at it. If it is open,</p> <p>9 you think that it is meeting the criteria, that is --</p> <p>10 the issue is, and if they had a problem five days ago</p> <p>11 and close it down for two days, and then reopen after</p> <p>12 meeting the criteria, you still eat there. It just</p> <p>13 happened to me the other day. I was kind of surprised</p> <p>14 to read that. That is how this is. As long as if it is</p> <p>15 functioning, and many of us, all of us, none of us knew,</p> <p>16 or most of us did not know the difference between</p> <p>17 manufacturing and compounding, and we went on, and when</p> <p>18 you keep saying outbreak, what is the nature of the</p> <p>19 outbreak. How many patients were involved? So we have</p> <p>20 recalls all the time, so once the recall is over, we</p> <p>21 start using them in the different batches. That is a</p> <p>22 common phenomenon in practice of medicine or practice of</p> <p>23 anything.</p> <p>24 Q If you heard today that a compounding pharmacy</p> <p>25 you use on a regular basis had a death, one death,</p>	<p>1 simplistic in saying that if you don't understand that</p> <p>2 if -- let us say there is a major issue with my</p> <p>3 practice, a government authority comes and says that I</p> <p>4 have a major problem with my practice, they would close</p> <p>5 down my practice. I'm not going to be able to see the</p> <p>6 patients anymore. They suspend my license. I won't be</p> <p>7 able to see the patients anymore, so if I'm still</p> <p>8 practicing, that means I'm either trying to correct it,</p> <p>9 or I have corrected it. FDA is a responsible</p> <p>10 organization. We think the CDC and FDA are these great</p> <p>11 organizations. They are very responsible. They will</p> <p>12 keep the public safe, and they keep them under check so</p> <p>13 if FDA has not closed down these facilities, that means</p> <p>14 that whatever the deficiency they had, it has been</p> <p>15 corrected. That is the natural assumption.</p> <p>16 Q Do you use a smart phone and you can go on the</p> <p>17 Internet on your phone?</p> <p>18 A I don't use my phone for Internet. I use</p> <p>19 either an iPad or a computer.</p> <p>20 Q Have you ever in the past ten years gone on</p> <p>21 your iPad or computer and looked at the reviews of a</p> <p>22 restaurant to see what other people think or how good</p> <p>23 they are?</p> <p>24 A I don't do that, but my children always do</p> <p>25 that. They always keep telling me that, "Dad, don't eat</p>

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<p>1 there."</p> <p>2 Q Okay. But they go on and they do a quick</p> <p>3 research to see that it's a good restaurant, right?</p> <p>4 MR. KIRBY: Objection to form, foundation.</p> <p>5 A Yes. They do that, but --</p> <p>6 MR. KIRBY: Hold on. Hold on. He's not</p> <p>7 finished. Go ahead.</p> <p>8 A Well, they do that and they tell me, while if</p> <p>9 I'm taking them out to dinner, I do follow their</p> <p>10 instructions, because they run my life, but if I'm going</p> <p>11 on my own, I do make my own decision and sometimes when</p> <p>12 they say there are bad reviews on it, I still go there</p> <p>13 if somebody else tells me it is a good restaurant. You</p> <p>14 have to look at yourself, and the reviews are nothing.</p> <p>15 Everybody individual opinion, there is no checks or</p> <p>16 balances. Here, FDA is the one which is looking at and</p> <p>17 State Board of Pharmacies are looking at it. Even with</p> <p>18 all these checks and balances, NECC is still in</p> <p>19 business. That essentially gives us the confidence that</p> <p>20 it is doing fine, whatever the deficiency they had, they</p> <p>21 corrected it. Even for a surgery center, if you have a</p> <p>22 major deficiency, we -- they close it down. The state</p> <p>23 will close down your operation of your surgery center,</p> <p>24 and after you correct them, you are able to open it.</p> <p>25 That doesn't mean that you can't go back and have</p>	<p>1 everything is -- they are complying with everything, so</p> <p>2 she would -- she would have not had any reason to worry</p> <p>3 about NECC. That is what I'm trying to get at. If I</p> <p>4 misled you, I'm sorry.</p> <p>5 Q Okay. So you would agree with me you have no</p> <p>6 reason to say she saw any representation that they only</p> <p>7 used properly licensed pharmacists extensively trained</p> <p>8 in aseptic compounding. You don't know that, do you?</p> <p>9 MR. KIRBY: Objection. I'm going to ask the</p> <p>10 witness to step out of the room for a second, okay?</p> <p>11 You can just step right outside. Hey, Jay, the</p> <p>12 witness is outside of the room. I didn't want to</p> <p>13 make a long speaking objection, but I think it's</p> <p>14 unfair, the question you're asking because you read</p> <p>15 this -- you read the sentence and it said if or</p> <p>16 when, so if or when she obtained materials from</p> <p>17 NECC, she would have seen these representations.</p> <p>18 And now you're saying, you're suggesting that he's</p> <p>19 trying to misrepresent to you, and in his report,</p> <p>20 that he -- that she definitely saw these documents</p> <p>21 and that's -- you know, and would've, you know, seen</p> <p>22 those representations made of them. This report</p> <p>23 specifically says -- puts that in there. If she had</p> <p>24 obtained, if or when, but, you know, if she had</p> <p>25 obtained materials from NECC, she would have seen.</p>
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<p>1 surgery there. That happens to the hospitals all the</p> <p>2 time.</p> <p>3 Q Well, Doctor, that was quite a long answer to</p> <p>4 whether you ever reviewed a restaurant, but okay. I'm</p> <p>5 with you. Go to page 8 of your report for me, please.</p> <p>6 It's -- at the top, it's continued from the previous</p> <p>7 page, but I want to pick up three words in where it</p> <p>8 begins "If or when," do you see that?</p> <p>9 A Yes.</p> <p>10 Q "She obtained materials from NECC, she saw or</p> <p>11 would have seen representations by NECC that" -- and</p> <p>12 then you list, that they were compliant, that</p> <p>13 medications were formulated by properly licensed</p> <p>14 pharmacist extensively trained in aseptic compounding,</p> <p>15 that NECC used only USD quality ingredients in</p> <p>16 formulating medications, that NECC utilize a state of</p> <p>17 the art compounding facility and equipment, and you go</p> <p>18 on. Where did you get your information that Dr.</p> <p>19 Bhambhani saw all those representations by NECC?</p> <p>20 MR. KIRBY: Objection. That's not what that's</p> <p>21 saying.</p> <p>22 A Oh, in fact, I don't think she said that she</p> <p>23 has seen it. I have seen this information in reviewing</p> <p>24 the documentation on this, so I would say that if she</p> <p>25 has seen this, the information is, like a manufacturer,</p>	<p>1 So I'm just -- I think you're mischaracterizing the</p> <p>2 report, and I don't think it's fair, so I just</p> <p>3 wanted to put that on the record.</p> <p>4 MR. MILLER: I appreciate that, but that's why</p> <p>5 I -- I was going to go through each one, and my</p> <p>6 question was you can't say that she saw anything.</p> <p>7 There's no evidence indicates that she saw some</p> <p>8 representation by a properly licensed pharmacy.</p> <p>9 MR. KIRBY: Sure. And I appreciate that, and</p> <p>10 it's your deposition. I just wanted the record to</p> <p>11 reflect that it -- you know, he's not saying that</p> <p>12 she definitely saw, and I think he may have</p> <p>13 clarified that, but I just didn't -- I didn't kind</p> <p>14 of like that misrepresentation, but that's fine. We</p> <p>15 can bring the doctor back in unless you have</p> <p>16 anything further.</p> <p>17 MR. ROTH: I'm just going to chime in, I was</p> <p>18 listening and certainly appreciate your objection</p> <p>19 the way you handled it. I didn't hear -- I didn't</p> <p>20 hear the question that way, as challenging the</p> <p>21 doctor for making a misrepresentation, nor did I</p> <p>22 think the question misrepresented what the report</p> <p>23 said. I just didn't want to leave that hanging out</p> <p>24 there, either. We'll all read the transcript, but,</p> <p>25 you know, again appreciate the way that you handled</p>

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<p>1 this objection.</p> <p>2 MR. KIRBY: Okay. Thank you. I'll call him</p> <p>3 back in. By the way, while he's out, what's the --</p> <p>4 how much longer do you think you have, Jay, because</p> <p>5 I know then Harry probably has some questions, too.</p> <p>6 MR. MILLER: I've got to stop probably at</p> <p>7 around quarter of 3:00.</p> <p>8 MR. MILLER: Meaning the deposition has to be</p> <p>9 done by then?</p> <p>10 MR. MILLER: No. I'm going to -- I'll let --</p> <p>11 I'll stop questioning, Glenn will take over and let</p> <p>12 Harry do his questioning, but we'll be done our part</p> <p>13 by quarter of 3:00.</p> <p>14 MR. KIRBY: Okay. Harry, do you think -- do</p> <p>15 you think with your questioning, I don't know how</p> <p>16 much you have, that we could be done by 4:30? Wait,</p> <p>17 wait, wait. So we're on -- we're in separate time -</p> <p>18 - this can be off the record, by the way.</p> <p>19 (OFF THE RECORD)</p> <p>20 BY MR. MILLER:</p> <p>21 Q Doctor, I want to clarify this paragraph that</p> <p>22 begins "If or when she obtained materials from NECC, she</p> <p>23 saw or would have seen representations by NECC," and</p> <p>24 then there's about seven lines of different</p> <p>25 representations. Isn't it true that you now know that</p>	<p>1 just talking about, at the very end reinforces the</p> <p>2 propriety of Box Hill's due diligence prior to</p> <p>3 purchasing from NECC.</p> <p>4 A Which one is that?</p> <p>5 MR. KIRBY: What's the question?</p> <p>6 A What page are we talking about?</p> <p>7 Q Page 8, the same paragraph we were just</p> <p>8 talking about, the very last line of that paragraph.</p> <p>9 A Oh, okay.</p> <p>10 Q Reinforces the propriety of Box Hill's due</p> <p>11 diligence prior to purchasing from NECC. Due -- what</p> <p>12 due diligence did Dr. Bhambhani exercise?</p> <p>13 MR. KIRBY: Objection to form, foundation, and</p> <p>14 the commentary before the question.</p> <p>15 A Well, if you are reading -- if I'm reading</p> <p>16 that sentence that is related to your question, there</p> <p>17 were no guidelines from any major medical associations,</p> <p>18 that is true, there were no guidelines for her to do a</p> <p>19 due diligence, or for -- by her surgery center prior to</p> <p>20 purchasing medication compounded such as NECC.</p> <p>21 Q My question is what due diligence did Dr.</p> <p>22 Bhambhani do? She did nothing, right?</p> <p>23 MR. KIRBY: Objection. Asked and answered.</p> <p>24 A Well, her own experience is the due diligence</p> <p>25 to a great extent. Then she did not do any additional</p>
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<p>1 Dr. Bhambhani didn't see any representations from NECC,</p> <p>2 correct?</p> <p>3 A That's correct.</p> <p>4 Q So his opinion, then, really isn't applicable</p> <p>5 anymore. I mean, there was no reassurance from any</p> <p>6 representation, because we know she didn't get any,</p> <p>7 correct?</p> <p>8 MR. KIRBY: Objection to form.</p> <p>9 A Yes. That's correct, she has not seen any of</p> <p>10 this.</p> <p>11 Q Okay. Is your opinion that Dr. Bhambhani had</p> <p>12 no inclination to do any investigation, however limited,</p> <p>13 of NECC prior to using them at Box Hill based in part</p> <p>14 because she had had this prior experience with NECC at</p> <p>15 her prior employer?</p> <p>16 MR. KIRBY: Objection to form. You can answer.</p> <p>17 A Well, not in part. She had the prior</p> <p>18 experience of her own, and that doesn't have anything to</p> <p>19 do with the prior employer. The prior employer was the</p> <p>20 one who initiated -- in any case, she was practicing on</p> <p>21 her own, whether she was employed by someone else or</p> <p>22 that -- that suffices to make orders from the same</p> <p>23 entity where you are getting them from. That is</p> <p>24 satisfactory. That is standard of practice.</p> <p>25 Q Well, continuing with that propriety we were</p>	<p>1 due diligence and that is what we are saying. I am</p> <p>2 saying, that there are no guidelines to do such thing,</p> <p>3 for example, we did not do any due diligence either</p> <p>4 afterwards, or before, so that is the standard practice</p> <p>5 among surgery centers, and offices, and by physician</p> <p>6 practices.</p> <p>7 Q So if we take away her prior employment</p> <p>8 experience, I want you to assume hypothetically that Dr.</p> <p>9 Bhambhani started practice on her own in 2007, has never</p> <p>10 heard of NECC, and says "I've got to purchase a</p> <p>11 compounded drug," opens a phone book up and picks NECC,</p> <p>12 do your testimony and your opinions that's all she's</p> <p>13 required to do, if they're a licensed compounding</p> <p>14 pharmacy, she's met the standard of care?</p> <p>15 MR. KIRBY: Objection to form, foundation, the</p> <p>16 hypothetical nature, and facts not in evidence. You</p> <p>17 can answer.</p> <p>18 A Well, as you said, it is completely</p> <p>19 hypothetical, but if that situation arises, if she opens</p> <p>20 the telephone book, she will not find NECC there. The</p> <p>21 way she will find where to get these drugs is, again,</p> <p>22 she has to go back to her previous employer or where she</p> <p>23 was trained, or a senior or a friend, or somebody else</p> <p>24 and find out about the information, and then if she is</p> <p>25 not satisfied with that information, then she may check</p>

<p style="text-align: right;">Page 170</p> <p>1 mean, he's not going to comment on the lawsuits</p> <p>2 filed and dismissed and why they were dismissed,</p> <p>3 things like that. I mean, that's not in his -- in</p> <p>4 his purview as a medical expert.</p> <p>5 MR. ROTH: Okay.</p> <p>6 BY MR. ROTH:</p> <p>7 Q So let me ask you to turn to page 7. Again,</p> <p>8 I'm trying to move through this quickly, because my</p> <p>9 timing is -- because I'm really trying to get back at</p> <p>10 it, and I hope to be done. Just going through my notes</p> <p>11 in sort of random order here. You talk about your</p> <p>12 testimony at trial, including a discussion and</p> <p>13 explanation for medication purposes. And I want to</p> <p>14 focus on number 2, which is "Consideration given to</p> <p>15 supply and demand of a particular medication." Doctor,</p> <p>16 do you have any information regarding the availability</p> <p>17 to Dr. Bhambhani, and Box Hill, about MPA that was made</p> <p>18 by a manufacturer, as opposed to a compound pharmacy?</p> <p>19 A No, I do not.</p> <p>20 Q Okay. And do you have any information that</p> <p>21 Dr. Bhambhani -- actually, strike that. I think you</p> <p>22 already testified. You have no information about any</p> <p>23 representations made by NECC to Dr. Bhambhani, correct?</p> <p>24 A No, I do not. That is correct.</p> <p>25 MR. ROTH: All right. All right. I think,</p>	<p style="text-align: right;">Page 172</p> <p>1 other questions that I asked in that regard. Yeah,</p> <p>2 I have no further questions.</p> <p>3 MR. KIRBY: Glen, or, I guess, do you have any?</p> <p>4 Are you good? (NO VERBAL ANSWER) Okay. Hey, Harry,</p> <p>5 I have just a few, just probably a few questions.</p> <p>6 MR. ROTH: Oh.</p> <p>7 MR. KIRBY: A few minutes' worth of questions.</p> <p>8 MR. ROTH: I do have one question, and I wanted</p> <p>9 -- I apologize and if you have some questions,</p> <p>10 that's fine.</p> <p>11 BY MR. ROTH:</p> <p>12 Q Doctor, there is a list of exhibits, a list of</p> <p>13 documents that was Exhibit 2, your report, and again,</p> <p>14 I'm trying to accommodate Greg. Do you read and rely,</p> <p>15 forming your opinions on all of those documents that are</p> <p>16 listed in a report?</p> <p>17 A Well, initially, I looked over those, but</p> <p>18 later on, they told me that this was limited to certain</p> <p>19 documents and that they were trying to reduce the time I</p> <p>20 spent on it. So certain documents I reviewed, they are</p> <p>21 more two, three, four, five, six.</p> <p>22 MR. KIRBY: He can read you which ones, I</p> <p>23 think, he reviewed, but hey, let me just say this.</p> <p>24 We didn't tell him that he had to limit his time in</p> <p>25 reviewing documents at all. That was not -- that</p>
<p style="text-align: right;">Page 171</p> <p>1 unless someone tells me I'm not...</p> <p>2 MR. KIRBY: Going once. Going twice.</p> <p>3 BY MR. ROTH:</p> <p>4 Q Do you know whether or not compounding</p> <p>5 pharmacies are permitted to -- by law to act as a</p> <p>6 manufacturer?</p> <p>7 MR. KIRBY: Objection to form. Foundation.</p> <p>8 A After 2012, I know that they -- they are not</p> <p>9 permitted to act as a manufacturer.</p> <p>10 Q Separate and apart from whether you know, or</p> <p>11 you knew, before 2012, were compounding pharmacies</p> <p>12 permitted to act as manufacturers?</p> <p>13 MR. KIRBY: Same objection.</p> <p>14 A No, they were not.</p> <p>15 MR. KIRBY: And hey, Harry, I just want to put</p> <p>16 on the record, can I get an objection, the same as I</p> <p>17 had before to the extent that he's not an FDA</p> <p>18 regulatory expert.</p> <p>19 MR. ROTH: That's fine.</p> <p>20 MR. KIRBY: Okay. MR. ROTH: And if I</p> <p>21 inartfully asked, I was -- I was trying to ask in</p> <p>22 the context of his being a pain management</p> <p>23 specialist who makes decisions and is expressing</p> <p>24 opinions about information one needs to know before</p> <p>25 ordering medications, and that really is for all</p>	<p style="text-align: right;">Page 173</p> <p>1 was not the case. I just want that to be clear, but</p> <p>2 for example, and I explained this in the other</p> <p>3 depositions, Harry, and I know you were busy, you</p> <p>4 know, winning your case, but we sent a lot of</p> <p>5 documents to a lot of different experts. Not all of</p> <p>6 them, necessarily, were going to be relevant, but</p> <p>7 I'm not the expert. So I didn't know which ones</p> <p>8 might or might not be relevant. And so we sent a</p> <p>9 large number of documents, but for example, you</p> <p>10 know, the --</p> <p>11 MR. ROTH: Well, before you -- before you go do</p> <p>12 this, because I know you have questions you want to</p> <p>13 ask.</p> <p>14 MR. KIRBY: Sure.</p> <p>15 MR. ROTH: We will -- we will send a letter</p> <p>16 asking specifically which documents from Exhibit 2</p> <p>17 the doctor relied upon in forming his opinion.</p> <p>18 MR. KIRBY: Fair.</p> <p>19 MR. ROTH: If that's okay?</p> <p>20 MR. KIRBY: Fair enough, and also, we have here</p> <p>21 with us, and we can just go ahead and mark them as</p> <p>22 cumulative exhibits if you want, is some literature</p> <p>23 and articles and recall notices and things with</p> <p>24 regards to FDA registered entities. We have here --</p> <p>25 we can mark that as --</p>

<p style="text-align: right;">Page 174</p> <p>1 BY MR. ROTH:</p> <p>2 Q I'm not going to, you know -- look without</p> <p>3 knowing what they are, I guess my initial question is,</p> <p>4 Doctor, did you look at any of those or are any of those</p> <p>5 documents that you relied upon that are not listed in</p> <p>6 Exhibit 2 in forming the opinions you're going to offer</p> <p>7 at trial?</p> <p>8 MR. KIRBY: Okay. And it's literature, just so</p> <p>9 you know, it's literature that we -- that --</p> <p>10 MR. ROTH: I'm asking him a question.</p> <p>11 MR. KIRBY: Oh, got you. Okay.</p> <p>12 MR. ROTH: Sorry, Greg. I don't want to --</p> <p>13 A Well, I have looked over all these. It just</p> <p>14 mainly shows all the recalls happening --</p> <p>15 BY MR. ROTH:</p> <p>16 Q Yeah.</p> <p>17 A -- with multiple drugs.</p> <p>18 Q Okay.</p> <p>19 A And market withdrawals of Depo-Medrol and</p> <p>20 those kinds of information.</p> <p>21 Q My question is more specific than that,</p> <p>22 Doctor. Before --</p> <p>23 A I -- I have reviewed it, yes. Yes, sir.</p> <p>24 Q Sorry?</p> <p>25 A Your question --</p>	<p style="text-align: right;">Page 176</p> <p>1 them, and you were saying you were going to ask us for a</p> <p>2 list, ask him for a list. But mainly I read the</p> <p>3 deposition of Lori Zebrowski (phonetic) and David Chasen</p> <p>4 (phonetic).</p> <p>5 Q Okay. All right.</p> <p>6 A And I read the deposition of Bhambhani.</p> <p>7 Q There are documents called "Depositions upon</p> <p>8 written questions of clinics." Did you read those</p> <p>9 before you prepared your report?</p> <p>10 A I have read several of them, but Dr. Bhambhani</p> <p>11 and Box Hill Surgery Center, I have read them, yes.</p> <p>12 Q Okay. And those are deposition transcripts.</p> <p>13 These are -- I'm referring to something different, which</p> <p>14 is a series of questions that are written with typed</p> <p>15 answers, and I want to know whether before you wrote</p> <p>16 your report, you read these. I think they are listed in</p> <p>17 Exhibit 2 as "Depositions, Rule 32." I'm sorry, "Rule</p> <p>18 31." I'm looking right at it and said 32. Did you read</p> <p>19 any of those? Faye Mentor, Donald Bartnik, Susan</p> <p>20 Calhoun, Charlotte Rue, Diana Holt --</p> <p>21 A Yes.</p> <p>22 Q -- Laura Ross --</p> <p>23 A Yes, yes.</p> <p>24 Q -- Kimberly Mason --</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 175</p> <p>1 Q Question for me?</p> <p>2 MR. KIRBY: He said he has reviewed them. I'm</p> <p>3 just repeating his answer.</p> <p>4 Q I know. I'm sorry, because I -- we're talking</p> <p>5 over each other. Did you review those materials before</p> <p>6 you prepared your report?</p> <p>7 A Before I prepared the report, I reviewed some</p> <p>8 of them, but more recently, like, yesterday and day</p> <p>9 before, I reviewed all of them.</p> <p>10 Q And the materials that are these exhibits that</p> <p>11 we have not seen and that are not on the list, did you</p> <p>12 pull those, or were those provided to you by counsel, by</p> <p>13 Mr. Kirby, or someone in his office?</p> <p>14 A Some were provided by him, and some, I found</p> <p>15 them myself.</p> <p>16 MR. ROTH: Okay. So we're going to ask for a</p> <p>17 list of what the doctor provided and what was</p> <p>18 provided by counsel.</p> <p>19 MR. KIRBY: Okay.</p> <p>20 BY MR. ROTH:</p> <p>21 Q There are also a number of depositions that</p> <p>22 are on Exhibit 2, did you read all of these deposition</p> <p>23 transcripts?</p> <p>24 A Initially, I read a lot of them, and almost</p> <p>25 all of them, but now, more recently, I have read some of</p>	<p style="text-align: right;">Page 177</p> <p>1 Q -- James Kathee, Noli, N-O-L-I, Dominguez,</p> <p>2 D-O-M-I-N-G-U-E-Z, or Rhonda Proscia, P-R-O-S-C-I-A?</p> <p>3 A Yes, I --</p> <p>4 Q Do you have those?</p> <p>5 A I have read those -- read them before, but</p> <p>6 more recently, I have read the -- in that section, I</p> <p>7 have read some of them, not all of those.</p> <p>8 MR. ROTH: That's all I have.</p> <p>9 MR. KIRBY: Okay. Why don't we do this. I</p> <p>10 think the doctor has to go to the bathroom. I'm</p> <p>11 going to stay right here, but can we just -- can I</p> <p>12 just get a few minutes to go through my notes and my</p> <p>13 follow-up questions? I could probably knock out a</p> <p>14 bunch of them, but that way he can go to the</p> <p>15 bathroom and I can ask my questions. I can look</p> <p>16 through my notes. Is that okay? Just a few,</p> <p>17 literally a few minutes? I'm conscious of time,</p> <p>18 so...</p> <p>19 (OFF THE RECORD)</p> <p>20 CROSS EXAMINATION</p> <p>21 BY MR. KIRBY:</p> <p>22 Q Dr. Manchikanti, I just have some follow-up</p> <p>23 questions from the questions that plaintiff's counsel</p> <p>24 asked. You were questioned about informed consent</p> <p>25 earlier. When obtaining informed consent, do you have</p>

<p style="text-align: right;">Page 194</p> <p>1 Q But order the prescription -- that you order 2 the medication you were using for a particular patient, 3 correct? 4 MR. KIRBY: Objection to form. 5 A That's correct. But we still don't write 6 individual prescriptions for each patient, though. That 7 is one thing, and -- 8 Q Well, if I gave -- if I gave a list of 9 patients as -- I read about it in a paper, and this is 10 not Dr. Bhambhani, and it is not you that had made-up 11 names, or the names of cartoon characters, as opposed to 12 real patients, that would give me an indication that I'm 13 dealing with a manufacturer, wouldn't it? 14 MR. KIRBY: Objection to form. 15 A Well, that would give me an indication that 16 they -- it is a fraudulent -- fraudulent entity, so... 17 Q That may be. Well, let's change -- let's 18 change it up a little bit. If I write -- if I give the 19 compounder names of patients, who I have not yet 20 determined need an epidural, would that be an indication 21 that I am dealing with a manufacturer, and not a 22 compounder? 23 MR. KIRBY: Objection to form. 24 A Again, that is not even an issue here. For 25 manufacturer, we don't give the names of the patients.</p>	<p style="text-align: right;">Page 196</p> <p>1 CERTIFICATE OF REPORTER 2 COMMONWEALTH OF KENTUCKY AT LARGE 3 4 I do hereby certify that the witness in the foregoing 5 transcript was taken on the date, and at the time and 6 place set out on the Title page hereof by me after first 7 being duly sworn to testify the truth, the whole truth, 8 and nothing but the truth; and that the said matter was 9 recorded by me and then reduced to typewritten form 10 under my direction, and constitutes a true record of the 11 transcript as taken, all to the best of my skills and 12 ability. I certify that I am not a relative or employee 13 of either counsel, and that I am in no way interested 14 financially, directly or indirectly, in this action. 15 16 17 18 19 20 21 22 CHELSEA SEVILLA-LOZADA, 23 COURT REPORTER / NOTARY 24 COMMISSION EXPIRES ON: 06/16/2019 25 SUBMITTED ON: 02/20/2017</p>
<p style="text-align: right;">Page 195</p> <p>1 We just order them, so... 2 Q Uh-huh. When you order from the compounder, 3 without giving any names, as you did for many years, 4 that then was an indication you were dealing with a 5 compounder -- I mean, with a manufacturer, correct? 6 A If I had then, such knowledge, yes. That 7 would be red flag to me, if I knew what I know today. 8 Q Well, you -- you knew -- you knew that you 9 were ordering from NECC, without giving any names, 10 because you were surprised to learn when they changed 11 their policy, right? 12 A That's correct. 13 MR. ROTH: Okay. I don't have any further 14 questions. Thank you. 15 MR. KIRBY: Thanks guys. 16 (DEPOSITION CONCLUDED AT 5:02 P.M.) 17 18 19 20 21 22 23 24 25</p>	